

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION**

**BETHANY NURSING HOME AND HEALTH
RELATED FACILITY, INC.¹**

Employer

and

Case 3-RC-11603

**1199 NEW YORK'S HEALTH AND HUMAN
SERVICES UNION, SEIU, AFL-CIO, CLC**

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended (“Act”), a hearing was held before a hearing officer of the National Labor Relations Board (“Board”).

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, I find:

The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Bethany Nursing Home and Health Related Facility, Inc. (“Nursing Home”) is a not-for-profit corporation that operates a skilled nursing facility. The Nursing Home is located on a 110-acre campus, called Bethany Village, in Horseheads, New York. Also located on this campus are Courtyards and Appleridge, which are assisted living facilities, and Knoll Apartments and Orchard Homes, which provide independent housing for senior citizens.

¹ The Employer’s name appears as amended at the hearing.

Annually, the Nursing Home derives gross revenues in excess of \$100,000 from its operations and purchases and receives at its facility, goods and materials valued in excess of \$5,000 directly from points outside the State of New York. Based on the parties' stipulation and the record as a whole, I find that the Employer is engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

The parties stipulated, and I find, that 1199 New York's Health and Human Services Union, SEIU, AFL-CIO, CLC ("Petitioner") is a labor organization within the meaning of Section 2(5) of the Act.

A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Petitioner seeks an election in a single-facility bargaining unit that includes all full-time and regular part-time licensed practical nurses ("LPNs") and service and maintenance employees employed at the Nursing Home.² Specifically, the Petitioner maintains that the following job classifications should be included in the single-facility unit: certified nursing assistant ("CNA"), CNA/Home Health Aide ("HHA"), elder care assistant ("ECA"), LPN, restorative LPN, activities CNA, activities assistant, physical therapy - ECA, AM head cook, dining services aide, PM head cook, sanitation aide, environmental services, environmental services floor care and lead housekeeper. Although requested to do so by the Hearing Officer, the Petitioner has not taken a position as to whether it is willing to proceed to an election in any alternative unit.

The Employer contends, contrary to the Petitioner, that the only appropriate unit must be a multi-facility unit including all LPNs and service and maintenance employees at all facilities

² The Petitioner amended its petition at the hearing to seek a unit consisting solely of the employees at the Nursing Home. There are approximately 136 employees in the petitioned-for unit.

located on its Bethany Village campus.³ Each facility is a separate not-for-profit corporation.⁴ The Employer's proposed unit adds approximately 121 employees to the petitioned-for unit.⁵

The Employer further contends that should a single facility be found appropriate, an additional twenty service and maintenance employees in the following job classifications should be included in the unit: facility maintenance worker, mail clerk, mail warehouse, electrician, maintenance assistant, maintenance mechanic, painter, support staff, support staff night, laundry, laundry lead and bus driver. The Employer classifies these positions as "shared services" because the employees provide services at more than one facility.

The parties stipulated that all business office clerical, managerial and professional employees (including registered nurses ("RNs")) and guards and supervisors as defined in the Act should be excluded from any unit found appropriate.

The Employer's five facilities are dedicated to providing housing and services for senior citizens with various levels of independence. The Nursing Home is a 122-bed skilled nursing facility that provides 24-hour-a-day nursing care and rehabilitative services. The Nursing Home has two floors with three units housing 117 residents. Courtyards is located about 100 yards north of the Nursing Home and is about 2 to 5 minutes walking distance from the Nursing Home. Courtyards is an adult home containing 144 units on two floors, with an enhanced dementia unit, called Orchardview. Appleridge is approximately 14 minutes walking distance from the Nursing

³ There are approximately 257 employees in the Employer's proposed unit.

⁴ Courtyards is incorporated as Bethany Retirement Home, Inc. Appleridge is incorporated as Appleridge Retirement Community, Inc. Knoll Apartments is incorporated as Bethany Senior Citizens Housing, Inc. Orchard Homes is incorporated as Orchard Homes at Bethany Village, Inc.

⁵ Specifically, the following job classifications would be added to the petitioned-for classifications: resident care aide, universal aide, universal aide D, universal aide E, universal aide N, relief charge, baker, dining services aide, head waitress, prep aide, home health aide ("HHA"), HHA per diem, home care physical therapy aide, personal care aide, fitness instructor/lifeguard and lifeguard.

Home.⁶ Appleridge is a 112-unit apartment building with three floors that offers individual apartments for seniors. Orchard Homes is located south of Appleridge and approximately 200 yards from the Nursing Home. Orchard Homes consists of 23 individual houses for seniors who live independently. Knoll is located next to Orchard Homes and a few hundred feet from the Nursing Home. Knoll has 40 subsidized apartments for low income seniors who can live independently. The facilities are serviced by an administration building called Colonial House, which is located northeast of the Nursing Home and adjacent to Courtyards on its south side. The maintenance building is located on the north side of Courtyards. The maintenance building is approximately a two-minute walk from Courtyards. Employees at the maintenance building and Courtyards provide services shared by the other facilities. All of the buildings are located on the Employer's campus, but are not physically connected to one another.

Bethany Village's five not-for-profit corporations are managed by three governing boards and an administrative hierarchy.⁷ Bethany Village has a general governing board with fourteen members and a three-member executive committee. There are also separate sub-boards for Appleridge and Knoll, which are subordinate to the general board. The members of the Appleridge and Knoll boards also serve on the general board. The chief executive officer ("CEO") has overall administrative authority at Bethany Village and reports to the general board. The chief financial officer ("CFO") reports directly to the CEO. The CFO is responsible for, and exercises authority over, accounts payable, the payroll benefits manager, accounts receivable and billing, senior staff accountant, and the director of purchasing. The campus admissions counselor, as well as each of the department directors for human resources, maintenance, dining

⁶ There was also testimony that the distance between the Nursing Home and Appleridge is 300 yards.

⁷ While there are five corporations there are only three payrolls: the Nursing Home, Appleridge and Courtyards.

services, and home care all report directly to the CEO.⁸ The administrators of the Nursing Home, Courtyards and Appleridge report directly to the CEO. The CEO of Orchard Homes and the site manager of Knoll report directly to the CEO.

The Nursing Home administrator is responsible for the operation of the Nursing Home and its 117 residents.⁹ The director of nursing (“DON”) is responsible for the nursing and medical needs of the residents. Directly reporting to the DON are three registered nurse (“RN”) supervisors. There are also two RNs. The RNs in turn directly supervise the 22 LPNs and 62 CNAs¹⁰ and 14 ECAs.¹¹ The nursing staff is responsible for 3 units with approximately 40 residents per unit. LPNs are responsible for administering medication to residents. Each CNA cares for ten residents. CNAs feed and bathe the residents as well as assist them with any of their other needs. CNAs attended classes and must be certified by passing a state test in order to be a CNA and perform their duties. The ECAs are not certified. Their duties are to take residents to physician appointments off-site, pass them meal trays, talk with them, transport them to activities or take them outside to smoke cigarettes.¹²

Courtyards employees provide services to about 100 residents. The employees assist the residents with their medical care, meals, activities and personal grooming. The employees providing these services are supervised by the administrator. Reporting directly to the

⁸ Currently, several of these positions are held by the interim CEO, Thomas Santobianco. Santobianco is the acting administrator of the Nursing Home, acting administrator of Courtyard, acting administrator of Appleridge and director of human resources. It is intended that all these positions will be filled.

⁹ Three individuals report directly to the administrator: the director of nursing, director of activities and director of social work.

¹⁰ There are also four activities CNAs, but it is unclear from the record whether they are supervised by the director of nursing or the activities director.

¹¹ The record disclosed that while there are 14 ECAs, only 4 or 5 are scheduled to work during a two-week pay period, including one who works on a part-time basis, with the other ECAs called in to work as needed.

¹² Some of the employees who work as ECAs at the Nursing Home also have jobs at other facilities on the Employer’s campus. For example, ECA Melissa Williams works in dining services at Appleridge, ECA Amy Wade worked at Courtyards and ECA Kristina Todzia worked in dining services at Courtyard.

administrator is the activities director and director of clinical services. The director of clinical services, an RN, supervises any medical care given to the residents. She supervises 4 LPNs, 13 RCAs and 24 universal aides who care for the residents. The LPNs assist residents with their medication and oversee the work of the universal aides. There is one LPN on duty 24-hours-a-day. The RCAs also assist residents with their medication as well as their personal grooming. The RCAs help transport residents who are wheelchair bound. The universal aides work in the enhanced dementia unit and assist residents with their personal grooming, make their beds, deliver their meals and perform some light dusting.

Appleridge is an assisted living facility consisting of 112 apartments. The following employees work at Appleridge: 1 fitness instructor/lifeguard; 1 lifeguard; 2 cook/supervisors; 14 dining service aides; 10 sanitation aides; 1 housekeeper/maintenance support; 2 housekeepers; and 4 receptionists. These employees provide services such as activities, housekeeping and meals to residents. The administrator at Appleridge oversees these services. An activities director reports directly to the administrator.

Appleridge also houses an agency that provides home care to seniors¹³ who contract for its services.¹⁴ If an Appleridge, Courtyards, Orchard Homes or Knoll resident needs home care, the resident may also contract for the agency's services. There is also an adult social day care program at Appleridge where members of the Horseheads community receive services from

¹³ These seniors are located at Bethany Village or in the general community. The record did not disclose how many residents receive services from the agency.

¹⁴ There are 16 employees on the Courtyards payroll who work at Appleridge for the home care agency, including 6 HHAs, 2 HHA per diems, 3 HHA/CNAs, 1 home care physical therapy aide, 2 personal care aides, 1 director of home care and 1 home care scheduler. There are also LPN per diem and RNs that work for the home care agency.

activity assistants and resident care aides.¹⁵ Appleridge also has an out-patient clinic.¹⁶ Finally, the Village Shop, a small store, is operated out of Applegate.¹⁷

Orchard Homes and Knoll provide independent housing for senior citizens. Some limited services are provided to these residents. There is a CEO of Orchard Homes and a part-time site manager of Knoll. The record does not indicate whether there are any employees directly employed at Orchard Homes and Knoll.

Residents of the Employer's various facilities receive many of the same services. Appleridge, Courtyards and the Nursing Home all provide residents with maintenance and housekeeping services. All three facilities also provide their residents with meals prepared on site and activities. At Orchard Homes and Knoll, residents are provided with maintenance related services and, if requested, meals delivered from the Nursing Home. The residents at the Nursing Home, Appleridge and Courtyards are all provided with on-site food service. The director of dining services is responsible for providing the residents with three meals a day. There are 80 dining services employees working on the Bethany Village Campus: 5 cooks, 1 baker, 1 prep aide, 45 dining service aides, 25 sanitation aides, 1 head waitress, the Nursing Home food service manager and Courtyards food service supervisor.¹⁸ There are separate dining services supervisors at the Nursing Home and at the Courtyards. Each supervisor has the same responsibilities at their respective facilities, and is responsible for ensuring that the aides

¹⁵ They are listed on and paid from the Courtyards' payroll.

¹⁶ The record did not disclose what services are offered at this clinic, who is employed there or who uses it.

¹⁷ The record only disclosed that it is a small store operated out of Appleridge. Currently, there is an educational program that supplies the employees who work in the store.

¹⁸ The following dining services employees are located at the Nursing Home: 1 AM head cook, 1 PM head cook, 14 dining services aides and 7 sanitation aides. The following dining services employees are located at Appleridge: 2 cooks, 14 dining service aides and 10 sanitation aides. At Appleridge, all dining services are supervised by the director of dining services, as there is no dining services supervisor on-site. The following food service employees are located at Courtyards: 3 cooks, 1 baker, 17 dining service aides, 1 prep aide, 1 head waitress and 6 sanitation aides.

and cooks are scheduled to work, approving their vacation requests and issuing minor discipline. The director of dining services is consulted by the supervisors in issuing any discipline at both facilities. The director is responsible for determining any major discipline, including termination, and he has disciplined between 12 and 24 employees at the Nursing Home. The director of dining services is also involved in hiring. The record disclosed that the director has scheduled interviews and has interviewed applicants. He is also consulted about any hiring decisions at both facilities.

Three identical meals are served each day at the Nursing Home and Courtyards. Each facility prepares the same breakfast foods in their own kitchens. The lunch and dinner served at both facilities are prepared in the Courtyards kitchen by Courtyards dietary employees. All baked goods for both facilities are also prepared at Courtyards. The lunch and dinner entrees prepared at Courtyards are placed into large containers for the Nursing Home. A Nursing Home dietary employee, with a driver's license, drives a Bethany Village van to pick up the containers. Typically, a Courtyard employee helps the Nursing Home employee load the food on the van. The food is then brought to the Nursing Home. This process is repeated for dinner. Once the food is delivered to the Nursing Home, several dietary employees form a tray line to prepare each resident's meal. Any meals at the Nursing Home that need to be prepared in accordance with a resident's dietary restrictions are prepared by the cook at the Nursing Home. The meals are either placed on a cart and taken to the units or taken to the Nursing Home's dining room. At Courtyards, the dining service aides take the residents' food orders. At each facility, the cooks prepare salads and vegetables as well as the same specials, such as hamburgers, hot dogs, grilled cheese sandwiches and deli sandwiches. At each facility, the sanitation aides wash the pots, pans and dishes. A Nursing Home aide may return any left-over food to Courtyards or bring it to

Appleridge for employee meals. A Nursing Home aide delivers to Appleridge baked goods prepared at Courtyards. A Nursing Home aide also delivers any lunches or dinners that are ordered by the residents of Knoll or Orchard Homes. Approximately four lunches and dinners are requested at Knoll or Orchard Homes every day.

Appleridge provides a more limited food menu. The residents at Appleridge select their meals from a menu and the meals are served either buffet style or out of the kitchen by dining service aides. The aides also accept any prepared food deliveries that are made by a dining service aide from the Nursing Home. The Nursing Home aide also brings baked goods made at Courtyards or left-over food that can be used for employee meals at Appleridge.

In order to ensure that food is properly served, dining services employees have temporarily worked at other facilities. The record establishes that an aide from Courtyards worked at the Nursing Home once in the past month during the day shift. A sanitation aide at Appleridge helped at the Nursing Home on a couple of occasions in the past month. Recently, a Courtyard dietary employee requested to work additional hours at the Nursing Home and his request was approved by the Nursing Home's food service manager. Two Nursing Home sanitation aides were sent to Courtyards to help on one or two occasions over the past month.¹⁹ Additionally, if dining services is catering an event at Appleridge, the Nursing Home or Courtyards, the director seeks aides from all three facilities to staff the event.

The residents at the Nursing Home, Appleridge and Courtyards are all provided with housekeeping services. Housekeeping is responsible for maintaining a clean environment for the residents. They clean the facilities' public areas as well as the residents' rooms. The director of plant operations supervises housekeeping at all three facilities. The housekeeping staff consists

¹⁹ The record also disclosed the dishwashing area in the Nursing Home was closed for three days and the pots and pans were sent to Courtyards to be washed.

of six housekeepers/environmental workers, one environmental–floor care worker and one housekeeper/maintenance support and two lead housekeepers. One lead housekeeper is stationed at the Nursing Home and the other is located at Courtyards. They report to the director of plant operations. The director is responsible for much of the employees’ day-to-day supervision at both facilities. The director approves any vacation requests made by the housekeeping staff. The housekeepers notify him if they are unable to report to work. He must also approve any overtime worked by the staff. He is responsible for interviewing applicants, hiring, terminations, and issuing any serious discipline. The lead housekeeper at the Nursing Home issues minor discipline and schedules the four housekeepers stationed at the Nursing Home. She is involved in hiring by either being introduced to a candidate or by being present while the director conducts a second interview with a candidate. The lead housekeeper also provides input to the director for his yearly evaluations of the housekeepers.²⁰

The following housekeeping employees work at the Nursing Home: four housekeepers/environmental service workers, one environmental floor care worker and one lead housekeeper. At Courtyards there is one lead housekeeper and three housekeeper/environmental service workers. At Appleridge there are two housekeeper/environmental service workers and one housekeeper/maintenance support. The housekeeper/maintenance support employee, William Copp, who is designated as working at Appleridge, also cleans at Courtyards, and takes clean laundry to the Nursing Home, if it is needed.²¹ Similarly, the environmental–floor care worker,

²⁰ The record was silent as to the duties of the lead housekeeper at Courtyards.

²¹ Copp also performs security work patrolling the campus on the third shift.

who is designated as working at the Nursing Home, is responsible for stripping and waxing the floors and shampooing the carpets at all three facilities. The record also disclosed that one housekeeper has worked at both the Nursing Home and Appleridge.²²

The residents at the Nursing Home, Courtyards and Appleridge are also provided with activities. Each facility has an activities director. At both Courtyards and the Nursing Home, the director supervises three activities assistants. There are no assistants at Appleridge other than the lifeguard and fitness instructor. At each facility, the director of activities organizes bingo, sing-a-longs and Bible study programs for the residents. Additionally, Courtyards and Appleridge residents participate in excursions, such as seeing the fall foliage. The participants in these activities travel on a Bethany Village bus.

There are approximately 20 employees who perform duties at more than one facility, and are categorized by the Employer as “shared services.”²³ These services include maintenance, laundry, mail, supplies and transportation.²⁴ The shared services employees are primarily located at either Courtyards or the maintenance building. The director of plant operations supervises the shared services laundry and maintenance employees.²⁵ The purchasing manager supervises the mail clerk, the warehouse supply person and the bus drivers.

The laundry department includes six laundry employees, including the lead person. The laundry is located in the basement of Courtyards. The laundry provides clean bedding and clothing to the Nursing Home. A laundry employee picks up dirty laundry and delivers clean laundry to the Nursing Home three times a day. The laundry employee brings the laundry to

²² It was unclear from the record how frequently this occurs.

²³ The employees at issue are paid from the Nursing Home’s payroll.

²⁴ The job classifications involved in these services are facility maintenance worker, mail clerk, warehouse, electrician, maintenance assistant, maintenance mechanic, painter, support staff, support staff night, laundry, laundry lead and bus driver.

²⁵ He also supervises housekeeping at the Nursing Home, Courtyards and Appleridge.

each of the three units and leaves it in a rolling cart. The laundry is also responsible for cleaning some clothing for residents at Courtyards.²⁶

The maintenance department includes three facility maintenance workers, one electrician, one painter, one maintenance assistant, one maintenance mechanic, two support staff, and one support staff night employee. These employees work throughout the campus, including the maintenance building, where the director of plant operations has an office. They all record their time by using a hand scanner located at either Courtyards or the Nursing Home.²⁷

On a daily basis, the director of plant operations assigns work orders to the maintenance employees. The work orders are generated by a resident or manager requesting certain repairs or other maintenance. This request is delivered to the director who assigns the work orders based on the employees' abilities. Accordingly, if there is an electrical repair, it is assigned to the electrician. Similarly, if there is a painting task, it is assigned to the painter. Any mechanical repair is assigned to the mechanic. The mechanic is not stationed in any one location. The maintenance assistant aids in the mechanic's work by running for parts or assisting with repairs. Other work orders are assigned to the three facility maintenance workers. One facility maintenance worker is primarily assigned to work at the Nursing Home and spends 50 percent of his time there. The rest of his time is spent working at the other facilities. The two other facility maintenance workers spend 46 percent of their time working at the Nursing Home, 30 percent at the Courtyards, 10 percent at Appleridge and the remaining 14 percent divided between Knoll and Orchard Homes. The three support staff employees are evening and night maintenance workers.

²⁶ Appleridge's laundry consists primarily of catering linens and is outsourced. At Courtyards, each unit has its own washer and dryer.

²⁷ The record discloses that the maintenance building does not have a break room. However, the record is silent as to where the maintenance employees take breaks or lunch.

The purchasing manager is responsible for purchasing and distributing all the supplies for the entire campus as well as the delivery of mail and bus transportation. He supervises the mail clerk, the warehouse supply person and two bus drivers. Both the mail clerk and the warehouse person work in the storeroom located in the maintenance building.²⁸ All four employees record their time by using a hand scanner at either the Nursing Home or Courtyards.

The warehouse person is responsible for ordering and distributing supplies to the facilities. The warehouse person delivers supplies to the Nursing Home at least once a day and more often if necessary. She brings the supplies to each unit and, if the nursing staff is occupied, she stocks the supplies. The warehouse person spends an hour and half to two hours a day at the Nursing Home.

The mail clerk's duties are to pick up and distribute the mail. The clerk picks up the mail at the post office and sorts it in the storeroom. The clerk then delivers and picks up the mail at each facility. At Orchard Homes, Knoll and Courtyards, he delivers the mail to each resident's mailbox or slot. At Appleridge and the Nursing Home, he leaves the mail at the front desk.

The bus drivers are responsible for transporting Courtyard, Appleridge and Nursing Home residents. They operate four or five vans and a small bus that is wheelchair accessible. Any wheelchair-bound resident from the Nursing Home is accompanied by an aide. Bus drivers and aides take residents to physician appointments, dialysis treatments, worship services, shopping, excursions and pharmacies to pick up medications.

The employees at all the facilities are hired in the same manner. A department supervisor determines that a position needs to be filled and submits a request to the facility's administrator. After the administrator approves the request, it is submitted to the centralized human resources department for all facilities, and the CEO for approval. Once approved by the CEO, the position

²⁸ The record did not disclose where the bus drivers are stationed or report to when not driving the bus.

is advertised through postings at each facility and in the local newspaper. All the applicants fill out the same application form indicating the facility they wish to work at. An existing employee who wishes to apply for a job opening at any facility, fills out an internal application form. Similarly, should a layoff occur, laid-off employees can apply for an open position at any facility, but can not bump an existing employee. The applications are normally to be submitted to human resources; however, the record disclosed that several Nursing Home employees submitted their applications directly to the Nursing Home. Applications are screened by the human resources department. Generally, an applicant is contacted by the position's immediate supervisor to schedule an interview and the supervisor conducts the interviews and selects a candidate.²⁹ Once selected, the applicant is presented to the director of the department who determines if the candidate will be hired.³⁰ A recommendation to hire the candidate is then made to the human resources department, which typically follows the recommendation.³¹

Once hired, all new employees attend a common orientation meeting. During the meeting, they are instructed on the facilities' procedures. The orientation meeting is held on a monthly basis at either Appleridge, Courtyard or the Nursing Home. The employees are subject to the supervision and discipline of their immediate supervisor. The department director is consulted and involved if a disciplinary infraction is severe. The employee's immediate supervisor also provides input regarding the employee's evaluation. Employees at all facilities receive a pay raise of two to three percent on their anniversary date.

²⁹ The record disclosed that for dining service employees, the dining services director is directly involved in the hiring process, including the interview and selection of the employees.

³⁰ At the Nursing Home, a candidate for a nursing position is interviewed by the nurse educator and presented to the DON. At Courtyards, the director of clinical services and the administrator select the candidate together.

³¹ Employees must also undergo a physical examination. The record disclosed that there was some difference in the type of examination Nursing Home employees undergo as compared to other employees. However, the record was unclear on how exactly the physical examinations differed.

All employees are paid in accordance with a wage schedule applicable to all the facilities. All employees have the same fringe benefits, including health insurance and a pension plan. They may purchase lunch or dinner for 95 cents. They can contribute to a sunshine fund that provides small loans or get well cards for participants. All employees record their time by a hand scanner or time clock. All personnel files are kept in Colonial House. Employees are provided with a designated smoking area and parking spaces at or near each facility. The employees at the Nursing Home and Courtyards have a break room located in their facilities.³² All employees are subject to the same personnel policies and practices as set forth in an employee handbook. There is a common grievance procedure available to all employees.

The employees at the various facilities have opportunities to interact with each other outside their normal duties. All employees have access to the weight rooms and swimming pool at Appleridge. In June 2003, there was campus-wide dementia training and in 2004 there was fire training. However, the record disclosed that some employees did not attend or could not recall the training. At Halloween, the employees' children dressed in costumes and went trick or treating at the Nursing Home and Courtyards.

There are other campus-wide operational functions. There is one centralized computer system. The forms for reporting an accident, any change to an employee's status, maintenance work order, and supply requests are the same for all facilities. The campus has one disaster preparedness plan. The same medical directors service the Nursing Home, Courtyards, and Appleridge's clinic and home care agency. One brochure is used to market all of the facilities.

Since July 2002, 13 employees have transferred from or to the Nursing Home. Seven of these employees transferred from the Nursing Home to other facilities, including Courtyards,

³² There is no break room in the maintenance building or at Appleridge and the record is silent as to where the employees at these facilities spend their lunch or break.

Appleridge and shared services positions. These employees worked in classifications including food service aide, elder care aide, CNA, facility maintenance worker and laundry employee. In addition, since August 2002, an additional six employees have transferred between Courtyards, Appleridge and shared services positions. Since November 2002, 13 employees have added a second job at another facility, including 8 employees whose primary job was at Courtyards and Appleridge and whose additional job was at the Nursing Home.³³ The 13 employees who added a second job worked in the following job classifications: dining services aide, laundry aide, universal aide, RCC, sanitation aide, elder care assistant, CNA, operator and receptionist. Employees who transfer to other facilities do not lose their seniority.³⁴

There is a weekly campus-wide admissions meeting to determine the level of care a resident-applicant or existing resident needs.³⁵ The level of care the individual needs determines the facility he or she is placed in or transferred to. From October 2004, to April 22, 2005, 48 residents transferred from one facility to another. Nine residents from Appleridge were admitted to the Nursing Home and three returned to Appleridge. Twenty-seven residents from Courtyards were admitted to the Nursing Home and seven were discharged to Courtyards, with three going to the dementia unit. One Knoll resident was admitted to the Nursing Home and then discharged to the Courtyards' dementia unit. One Orchard Homes resident was admitted to the Nursing Home. Ten residents from the Nursing Home were discharged, nine to Courtyards and one to Appleridge.

There is no history of collective bargaining at any of the Employer facilities involved herein.

³³ Three employees were cross-trained as a CNA/HHA at the Nursing Home and Courtyards.

³⁴ When an employee works at a different facility, their wages are attributed to that facility's budget.

³⁵ The following people attend these meetings: admissions counselor, administrators of the facilities, Courtyards social worker, Nursing Home social worker, DON and Courtyards' director of clinical service.

UNIT APPROPRIATENESS IN THE HEALTH CARE INDUSTRY

Unit appropriateness in a non-acute health care facility is determined by the standard set forth in Park Manor Care Center, 305 NLRB 872 (1991). In Park Manor, the Board applied an “empirical” community-of-interest test. Under this standard, traditional "community of interests" factors, as well as background information gathered during rulemaking and prior precedent involving the type of facility or type of unit sought are examined. Id. at 875. See also CGE Caresystems, Inc., 328 NLRB 748 (1999) and Virtura Health, 334 NLRB No. 76 (2005). Based on the guidelines set forth by the Board in Park Manor, I have considered the evidence in this case and find that the single-facility unit sought by Petitioner, is not an appropriate unit under the Act.

In determining the scope of the unit, the Board established a presumption that a single-facility unit is appropriate in non-acute health care facilities; however this presumption may be rebutted. The following factors are determinative in rebutting the single-facility presumption: geographic proximity, employee interchange and transfer, functional integration, administrative centralization, common supervision, similarity of employee skills, functions and working conditions, and bargaining history. St. Luke’s Health System, Inc., 340 NLRB No. 139 (2003); Heritage Park Health Care Center, 324 NLRB 447 (1997); Passavant Retirement & Health Center, 313 NLRB 1216 (1994).

In applying these factors in Lutheran Welfare Services of Northeastern Pennsylvania, Inc., 319 NLRB 886 (1995), the Board found appropriate a multi-facility service and maintenance unit, including LPNs, where there was common supervision, centralized administration and employee contact. Specifically, the two facilities were 100-200 yards apart and provided the same care, except one had an Alzheimer’s unit. Both facilities had common

supervision for food service, laundry, housekeeping, maintenance, transportation and grounds keeping. Food service was also in the process of reorganizing, so that one facility provided cold foods and the other provided hot foods for patients. Maintenance and housekeeping employees spent time working at both facilities.³⁶ There were also pool nurses that, if needed, could be assigned to either facility and several dietitians floated between facilities. While corrective counseling began with the immediate supervisor, any suspensions or terminations had to be reviewed by human resources and the corporate vice-president.

Similarly, in St. Luke's Health System, Inc., *supra*, the Board found appropriate a multi-facility unit that included employees at 21 clinics in 16 locations. The Board found that the clinics were functionally integrated in both their employees and in the services provided to their patients. Patients transitioning out of acute care were provided with a broad range of health services at the various clinics. Administrative personnel functions were centralized.³⁷ All the clinics had the same operational systems for computers, patient information, purchasing, receivables, billing, payroll, time and attendance. Each clinic employed the same number of professional employees, who had contact and interchange.³⁸ Human resources directed labor relations at the clinics and its three directors bore ultimate responsibility for all the clinics.³⁹ Due to this centralization, the Board concluded that the clinics had little autonomy even though the

³⁶ Of the eight maintenance employees, one spent 75 percent of his time at one facility and the rest of his time at the other facility. Two maintenance employees worked three days a week at one facility and spent their remaining time at the other facility. Of the eight housekeepers, two worked at one facility two days a week and spent their remaining time at the other facility.

³⁷ The facilities all had uniform job screening, applications and job descriptions. Additionally, employees were subject to the same work hours, wage scale, policies, procedures and fringe benefits. The job skills and duties of the job classifications were the same systemwide.

³⁸ Employee contact occurred through temporary transfers of 15 to 20 percent of employees and permanent transfers of 29 employees in 2 years. There were also RNs who floated among the various clinics and employees that were sent to short-staffed clinics.

³⁹ Human Resources determined the amount of an employees' merit increase, screened outside job applicants, preformed initial interviews of outside job applicants and determined the initial salary of new hires. Human Resources also issued personnel policies and procedures, investigated and authorized terminations and suspensions and administered the grievance policy.

clinic manager scheduled employees, made time-off determinations and performed annual evaluations which could be used to determine merit increases.

In West Jersey Health System, 293 NLRB 749 (1989), the Board found appropriate multi-facility units encompassing four acute-care facilities. The organizational structure and personnel practices among the facilities were centralized. While administrators and supervisors at each facility exercised a degree of autonomy, there was only one system administrator.⁴⁰ The system administrator was responsible for overseeing all the facilities. Certain departments were also organized systemwide with a department director responsible for hiring, firing, evaluations, discipline and grievances. The systemwide departments included nursing, materials management, communications, admissions, medical records, quality assurance, and food services.

Employees at all the facilities shared common conditions of employment and had contact with each other.⁴¹ In food service, one facility prepared food that was served to patients and employees at another facility. Certain functions also operated systemwide, including transportation, mail, materials distribution, purchasing of supplies, warehousing, linen supply, data processing, printing, communications, payroll preparation, community relations, and laboratory services. The Board found that when a function was centralized, a labor disruption at one facility, “would adversely affect the health care available” at other facilities in the system. *Id.* at 751. In so concluding, the Board found significant that food prepared at one facility was served at another. *Id.*

⁴⁰ The supervisors assigned and directed work, granted overtime, approved leave requests, and initiated discipline. Each facility also had its own director of nursing in charge of day-to-day supervision of the nursing staff, including, scheduling and evaluations.

⁴¹ The employees had common wage scales, job classifications, benefits, personnel policies and procedures. Job applicants filled out the same form, job postings were posted systemwide, employees transferred without loss of seniority and seniority was systemwide allowing an employee at one facility to bump an employee at another facility. There were also a significant number of employees who permanently transferred and regularly rotated among facilities.

In Child's Hospital, 307 NLRB 90 (1992), a nursing home, hospital and service provider were found to constitute a single employer. The operations were located within one building with a high degree of functional integration. Laundry, pharmacy, dietary services, housekeeping and maintenance were provided systemwide. The Board found that there was centralized control of labor relations, as there was one human resources department that established and administered employment policies for all operations. The employees enjoyed uniform benefits, wage scales and a common handbook. There was also a significant degree of contact among the employees.

In the instant case, the record demonstrates that the single-facility presumption has been rebutted. The facilities demonstrate a high degree of functional integration as well as common centralized supervision. Maintenance, housekeeping, laundry and food services are provided on a multi-facility or campus-wide basis. Maintenance, housekeeping and laundry all share common supervision by the director of plant operations. He assigns work, approves vacations, is notified by employees if they are unable to report to work, interviews, performs yearly evaluations, hires, disciplines and terminates employees. Maintenance services are provided at all the facilities on the campus. Housekeeping services are provided primarily at three of the facilities, the Nursing Home, Courtyards and Appleridge, with certain housekeepers assigned to each facility. The record disclosed that housekeeping department employees have floated between facilities. The director of plant operations also directly supervises the laundry which is located in the Courtyards, but provides all the clean bedding and clothing to the Nursing Home.

The director of dining services oversees food preparation campuswide. While there is a dining services supervisor at the Nursing Home and Courtyards, the record disclosed that the director is involved in hiring, issuing discipline and terminations. Courtyards provides food for

the Nursing Home and a limited amount of food to the other facilities. Moreover, supplies, mail and transportation are provided campus-wide and the employees performing these services are commonly supervised by the purchasing manager. Residents at all facilities receive a wide range of other common services, including activities and transportation. Residents transfer among the facilities based on the level of care they require. Moreover as in West Jersey Health System, 293 NLRB at 751, labor unrest at one facility could adversely affect resident care at other facilities, given the high degree of centralized services, such as food preparation, laundry and maintenance provided to residents at many of the facilities.

Employees at the multiple facilities on the campus have similar skills, functions and working conditions and may work in departments organized on a campus-wide or multi-facility basis. There are housekeepers at the Nursing Home, Courtyards and Appleridge who perform that same function, cleaning the common areas and resident's rooms;, using the same skills to do so. There are dining services employees at the three facilities who use the same skills to perform the same function of preparing meals. The maintenance employees work at all the facilities.

Employees at the Nursing Home and Courtyards have similar responsibilities caring for the residents. The LPNs at the Nursing Home and Courtyards provide direct nursing care to the residents. CNAs at the Nursing Home care for the residents by feeding and bathing them as well as assisting them with any of their needs. The Nursing Home also employs ECAs who care for the residents by taking them to physician appointments, assisting with their meals and transportation in wheelchairs. Similarly, Courtyards employs RCAs who assist residents with medication, personal grooming and transporting residents in wheelchairs. Courtyards also employs universal aides, who like the CNAs and ECAs at the Nursing Home, assist residents with personal grooming, meals and cleaning. At the Nursing Home, Courtyards and Appleridge,

activities assistants provide residents with activities, such as sing-a-longs and Bible-study. At Courtyards and Appleridge they are also involved with off-site excursions.

All employees campus-wide are paid in accordance with a common wage scale, have common benefits, record their time by either a hand scanner or time clock, and are subject to the same personnel policies and practices set forth in the employee handbook. The campus also has centralized administration. All administrators and directors report to the CEO. The CEO oversees all of the facilities. His oversight includes any hiring conducted at the facilities. He, along with a centralized human resource department, must approve any request to hire additional staff. He also provides the final resolution of any employee grievance under the common grievance procedure. Employees are also subject to the same progressive disciplinary policy. There is one payroll manager responsible for employee compensation. There is a centralized computer system. The facilities are all physically located on the same campus and are walking distance of one another.

In addition to the facilities' close physical proximity, the record established that there is frequent contact and interchange among the employees at the Nursing Home, Courtyards and Appleridge. The record establishes that employees frequently transfer jobs among the Nursing Home, Courtyards, Appleridge and shared services positions. Moreover a significant number of employees at these facilities and in shared services positions have taken second jobs at another facility or in shared services positions. The shared services employees, such as maintenance, floor care, mail, supply and bus transportation, regularly work at the Nursing Home, Courtyards, Appleridge and other facilities. Employees in the laundry, located at Courtyards, also have regular contact with the Nursing Home when they are delivering and picking up laundry. Dining services employees from the Nursing Home have contact with all the other facilities in

delivering and picking up food. Dining services employees at one location frequently work at another facility, when the facility is short staffed or to cater events. All new employees attend a common orientation meeting.

The extensive contact and interchange among employees of the campus facilities, the functional integration and similarity of the employees' work throughout these facilities, the common overall supervision and centralization of labor relations, outweighs any autonomy exercised by each facility. See St. Luke's Health System, supra; West Jersey Health Systems, supra.

The Petitioner, in its post-hearing brief, cites Visiting Nurses Assn. of Central Illinois, 324 NLRB 55 (1997), in which the Board found that a single-facility unit, consisting of a visiting nursing facility, was appropriate, rather than a multi-facility unit consisting of the visiting nurse facility and a hospital complex. However, in that case, there was no common supervision of employees across facilities. Here, the petitioned-for unit includes housekeepers at the Nursing Home who are directly supervised by the director of plant operations. The housekeepers at Courtyards and Appleridge also share the same supervision. Moreover, the maintenance employees at all facilities have common supervision. Similarly, the dining services department has one director who is responsible for all the dining services employees, including at the Nursing Home Courtyards and Appleridge. Lacking in the other cases⁴² cited by Petitioner in its brief is the functional integration that exists here. Thus, food is prepared at the Courtyards facility and is transported to the Nursing Home. The laundry, which is also supervised by the director of plant operations, is located at the Courtyards and provides all the Nursing Home's bedding and clean clothing.

⁴² O'Brien Memorial Hospital, 308 NLRB 553 (1992); Manor Healthcare Corp., 285 NLRB 224 (1987).

Accordingly, I conclude that the single-facility presumption has been rebutted and that the petitioned-for unit consisting of the LPNs and service and maintenance employees at the Nursing Home is not an appropriate unit. As the petitioned-for single-facility unit is not an appropriate unit, and the Petitioner has not indicated its willingness to proceed to an election in any alternative unit, I shall dismiss the petition.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 Fourteenth Street, NW, Washington, DC 20570. This request must be received by the Board in Washington **by June 9, 2005.**

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, DC. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board website: www.nlrb.gov.

DATED at Buffalo, New York this 26th day of May 2005.

/s/ [Charles J. Donner]

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